



STATE BOARD OF ELECTIONS

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MEMORANDUM 2011-01

To: County Boards of Elections
From: Gary O. Bartlett, Executive Director *Gary O. Bartlett*
Subject: Local Redistricting

If you have municipalities in your county that elect members of the city council from districts, it would be a good idea for you to contact the managers of those municipalities to make sure they are aware of their redistricting obligations following the 2010 census.

There are two kinds of electoral districts. One is the true electoral district, where the candidate must reside within the district and only residents of that district vote for that seat. The other is the residency district, where the candidate must reside within the district but all the voters of the city vote for all seats at large.

Municipalities with true electoral districts

GS 160A-23.1, set out below, requires that municipalities that use true electoral districts must determine after each federal census whether population changes require redistricting.

After reviewing GS 160A-23.1, it would be appropriate for you to contact the managers of these municipalities to remind them of their obligation to see whether redistricting is necessary and to confirm their knowledge of GS 160A-23.1

Also, municipalities which must redistrict may delay their elections to 2012. You might encourage the managers of affected municipalities to pay early attention to census data they will receive in April in an attempt to gauge whether their redistricting can be completed in time for filing for a regular 2011 election. Keep in mind that redistricting is subject to Section 5 preclearance and that by the nature of redistricting such submissions are larger and take more time for preparation and review by the USDOJ. It is the task of the political jurisdiction to prepare and submit such preclearances, but you should cooperate as needed.

Finally, note that GS 163-294.2 delays for a few weeks candidate filing for municipal offices for municipalities that use districts. That statute is set out below. As a consequence, you will have one filing period (the regular one) for cities that use at-large voting only and a different filing period (the delayed one) for municipalities that use districts.

Municipalities with residency districts

GS 160A-23.1 does not require redistricting in municipalities with residency districts. Because all voting is at-large, it is lawful for those municipalities to continue to use residency districts even after a census reveals population imbalances. However, such municipalities may redraw their lines.

Even if they do not redistrict, they are still subject to the delayed filing period of GS § 163-294.2.

STATUTORY REFERENCES:

PLEASE NOTE the following section of **GS § 163-294.2**:

(c) Candidates seeking municipal office shall file their notices of candidacy with the board of elections no earlier than 12:00 noon on the first Friday in July and no later than 12:00 noon on the third Friday in July preceding the election, except:

- (1) In the year following a federal decennial census, candidates seeking municipal office in any city which elects members of its governing board on a district basis, or requires that candidates reside in a district in order to run, shall file their notices of candidacy with the board of elections no earlier than 12:00 noon on the fourth Monday in July and no later than 12:00 noon on the second Friday in August preceding the election; and
- (2) In the second year following a federal decennial census, if the election is held then under G.S. 160A-23.1, candidates seeking municipal office shall file their notices of candidacy with the board of elections at the same time as notices of candidacy for county officers are required to be filed under G.S. 163-106.

§ 160A-23.1. Special rules for redistricting after a federal decennial census.

(a) As soon as possible after receipt of federal decennial census information, the council of any city which elects the members of its governing board on a district basis, or where candidates for such office must reside in a district in order to run, shall evaluate the existing district boundaries to determine whether it would be lawful to hold the next election without revising districts to correct population imbalances. If such revision is necessary, the council shall consider whether it will be possible to adopt the changes (and obtain approval from the United States Department of Justice, if necessary) before the third day before opening of the filing period for the municipal election. The council shall take into consideration the time that will be required to afford ample opportunities for public input. If the council determines that it most likely will not be possible to adopt the changes (and obtain federal approval, if necessary) before the third business day before opening of the filing period, and determines further that the population imbalances are so significant that it would not be lawful to hold the next election using the current electoral districts, it may adopt a resolution delaying the election so that it will be held on the timetable provided by subsection (d) of this section. Before adopting such a resolution, the council shall

hold a public hearing on it. The notice of public hearing shall summarize the proposed resolution and shall be published at least once in a newspaper of general circulation, not less than seven days before the date fixed for the hearing. Notwithstanding adoption of such a resolution, if the council proceeds to adopt the changes, (and federal approval is obtained, if necessary) by the end of the third business day before the opening of the filing period, the election shall be held on the regular schedule under the revised electoral districts. Any resolution adopted under this subsection, and any changes in electoral district boundaries made under this section shall be submitted to the United States Department of Justice (if the city is covered under Section 5 of the Voting Rights Act of 1965), the State Board of Elections, and to the board conducting the elections for that city.

(b) In adopting any revisal under this section, if the council determines that in order for the plan to conform to the Voting Rights Act of 1965, the number of district seats needs to be increased or decreased, it may do so by following the procedures set forth in Part 4 of Article 5 of Chapter 160A of the General Statutes, except that the ordinance under G.S. 160A-102 may be adopted at the same meeting as the public hearing, and any referendum on the change under G.S. 160A-103 shall not apply to the municipal election in the two years following a federal decennial census.

(c) If the resolution provided for in subsection (a) of this section is not adopted and:

- (1) Proposed changes to the electoral districts are not adopted, or
- (2) Such changes are adopted, but approval under the Voting Rights Act of 1965, as amended, is required, and notice of such approval is not received,

by the end of the third business day before the opening of the filing period, the election shall be held on the regular schedule using the current electoral districts.

(d) If the council adopts the resolution provided for in subsection (a) of this section and does not adopt the changes, or does adopt the changes, but approval under the Voting Rights Act of 1965, as amended, is required, and notice of such approval is not received, by the end of the third day before the opening of the filing period, the municipal election shall be rescheduled as provided in this subsection and current officeholders shall hold over until their successors are elected and qualified. For cities using the:

- (1) Partisan primary and election method under G.S. 163-291, the primary shall be held on the primary election date for county officers in the second year following a federal decennial census, the second primary, if necessary, shall be held on the second primary election date for county officers in that year, and the general election shall be held on the general election date for county officers in that year.
- (2) Nonpartisan primary and election method under G.S. 163-294, the primary shall be held on the primary election date for county officers in the second year following a federal decennial census, and the election shall be held on the date for the second primary for county officers in that year.
- (3) Nonpartisan plurality election method under G.S. 163-292, the election shall be held on the primary election date for county officers in the second year following a federal decennial census.
- (4) Election and runoff method under G.S. 163-293, the election shall be held on the primary election date for county officers in the second year following a federal decennial census, and the runoffs, if necessary, shall be held on the date for the second primary for county officers in that year.

The organizational meeting of the new council may be held at any time after the results of the election have been officially determined and published, but not later than the time and date of the first regular meeting of the council in November of the second year following a federal decennial census, except in the case of partisan municipal elections, when the organizational meeting shall be held not later than the time and date of the first regular meeting of the council in December of the second year following a federal decennial census.

(e) This section does not apply to any municipality that, under its charter, is not scheduled to hold an election in the year following a federal decennial census. (1989 (Reg. Sess., 1990), c. 1012, s. 2; 1999-227, s. 4; 2000-140, s. 34; 2002-159, s. 52; 2009-414, s. 1.)